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39. (New) A process for producing cells highly expressing gene products encoded by the expression vector as set forth in claim 35, comprising transferring the expression vector into the cells.--

REMARKS

Reconsideration is requested.

Claims 8 and 9 have been canceled, without prejudice.

Claims 34-39 have been added. Support for the amended claims may be found throughout the specification. No new matter has been added. Claims 34-39 are pending.

The Examiner is requested to confirm receipt of the certified copies of the priority documents in the parent application 09/214,465, as acknowledged in the Office Action dated May 28, 2002, in the parent application. A copy of page 1 of the Office Action dated May 28, 2002, from the parent application 09/214,465, wherein the present Examiner acknowledged receipt of the certified copies of the priority documents, is attached, for the Examiner's convenience.

Consideration of the attached Information Disclosure Statement and the documents included therewith and return of the attached PTO-1449 Form, listing the same, are requested, pursuant to MPEP §609.

A copy of the Declaration from the parent application 09/214,465, is attached. Acceptance of the attached Declaration, pursuant to Rule 63(d) is requested along with the withdrawal of the Examiner's objection to the Declaration noted on page 2 of the Office Action dated August 23, 2002 (Paper No. 11).

The specification has been amended to include a new title and Abstract, as required by the Examiner on page 2 of Paper No. 11. Entry of the above and withdrawal of the objections to the specification are requested.

The Section 103 rejection of claims 8 and 9 over Pavlakis (U.S. Patent No. 5,972,596) and DePonti-Zilli (PNAS 1988, Vol. 85, pages 1389-1393), is moot in view of the above. The pending claims are submitted to be patentable over the cited art. As noted by the Examiner, the cited patent fails to teach a resistance gene operatively linked to a coding sequence containing an inhibitory/instability sequence. See, page 5 of Paper No. 11. Moreover, the cited patent fails to teach or suggest an expression vector, cells containing an expression vector or a process of producing the same, as presently claimed. The Examiner's combination of the secondary reference to allegedly teach the previously claimed invention is submitted to have been made, with due respect, with an impermissible use of hindsight. The presently claimed invention is submitted to be patentable over the cited art.

Section 112, second paragraph, rejection of claim 9 is moot in view of the above. The presently claimed invention is submitted to be definite.

In view of the above, the claims are submitted to be in condition for allowance and a Notice to that effect is requested.

Respectfully submitted,

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By: _____



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